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To: Policy and Resources Cabinet Committee – 2nd February
2018

Subject: **INFORMATION GOVERNANCE UPDATE**

Classification: Unrestricted

Summary: This report provides further detail as requested in relation to the performance monitoring data on request made under the Freedom of Information Act and Data Protection Act.

Introduction and Context

1. For a number of years, the council has struggled to meet the targets set in relation to Data Protection Act subject access requests. Additionally, the growing number and complexity of Freedom of Information Act requests places a burden on a service that has been historically under-resourced.
2. Information governance requests are triaged and recorded by the Information Resilience and Transparency team on behalf of the Council. The Information Resilience & Transparency Team continues to provide advice on the most efficient ways to prepare records to save time and resource for operational units. Guidance is also available on KNet and is issued with every referral.
3. As this committee has been previously advised, in addition to the Freedom of Information and Data Protection requests, the past year has seen the implementation and delivery of plans to improve readiness for the General Data Protection Regulation (GDPR) which comes into force in May 2018. This significant piece of work which sits on the council's corporate risk register (along with the majority of most public authorities and major corporate entities) has required resourcing without any additional budget.
4. The figures for Data Protection subject access requests show an improvement for Quarter 3. The year to date performance now stands at 82% versus figures of 79% and 78% at the end of the second and first quarters respectively. The Freedom of Information statistic has remained at 90% throughout.
5. It is important to understand the significant increase in the use of these statutory requests for information and the fact that the Information Resilience and Transparency Team has managed this without significant increases in resource.

6. Attached at Appendix A is the full range of performance data for these requests. This information is updated regularly and is available on the council's website for all of our residents. In the past ten years, the number of FOI/EIR requests has more than doubled. Similarly, the number of total requests under the Data Protection Act has significantly increased in the past ten years with the total number of disclosure requests rising by over 500 (44.6% increase on previous year. Despite this significant increase in work, it will be noted that in the same period, the performance of the council also significantly improved in all of the key respects. In particular, notwithstanding the performance reporting at the last Policy and Resources Cabinet Committee, the number of days to respond to Subject Access Requests is now at the lowest point since recording began in 2005.
7. Finally, the Information Resilience and Transparency Team has also assumed responsibility in the past year for the disclosure of relevant records to the Police and external agencies involved in court proceedings.

Reasons for Delays

8. It is important to state that the organisation seeks in all circumstances to comply with the statutory timetable for responding to requests. However, to get close to ensuring compliance in all circumstances would require a multi-million pound investment in additional staffing and technology.
9. It is also important to understand that the type and quantity of data that the council holds is significant. Because of the complex services that we provide across communities in Kent, it does follow that the data that we hold and create about service users is similarly complex.
10. It is noticeable that delays are far more likely to occur in complex service areas such as social care. Under the Data Protection Act, an individual can request the data that an organisation holds on them. This is the subject access request which is referred to in the performance dashboard. However, to comply with this is not necessarily straightforward.
11. In complying with requests it will often require a search across a number of physical, geographic and technology locations. The responsibility for carrying out these searches rests with directorate staff who have to do this alongside their day job, balancing with a range of other frontline challenges (which can include further alternative statutory obligations).
12. Once the data has been identified, it needs to be collated, printed and readied for disclosure. This process means that the data needs to be checked to ensure that only the correct information is provided. At this stage, files are weeded to remove incorrectly filed information and are checked to ensure that they relate to the data subject. This includes a careful check to ensure that the council is not prejudicing the data protection rights of third parties. In most cases, this means that the records need to be physically redacted, with thousands of pages of information checked and struck through with a black marker where it contains sensitive data that should not be disclosed.

13. Again, for an organisation of our size, history and complexity, this is not a straightforward process. If the subject access request relates to an individual who has made an application for a school place for their son in the past year, this is a relatively straightforward (although still time-consuming) process to gather the documents and emails for disclosure. However, the majority of our enquiries are from residents who have used service(s) over a number of years and whose records are considerable. These can include records of children formerly in the care of the County Council from several decades ago to those who have been supported by KCC for their entire lifetime.
14. In these cases, there are several thousands of pages worth of information stored in different geographic locations that require identification, sorting and recovery before review and redaction can even take place.
15. Unfortunately, even in recent cases transacted entirely on electronic case systems it is not easy or straightforward to simply “print all” to transfer the data out of the system to the individual requesting the data.
16. Delays can occur for a variety of reasons which can range from the operational units not providing information in time to a lack of resources. We often experience delays around queries over consent, legal involvement, and requests not recognised by recipient.
17. In recent years, the impact of budget cuts on the council has impacted on the amount of administrative support. There has been a necessary balancing exercise for the council to adopt to meet the budget requirements and balance frontline service delivery.
18. Similarly, as these are complex requests, they also need the input of committed and busy frontline staff who need to balance the welfare and needs of their service users with the time-consuming review of files. As Members have previously considered, the complexity is such that even multi-million pound investment whilst improving the picture would not ensure compliance in all cases.
19. The Information Resilience and Transparency Team support frontline colleagues in the response to these requests, particularly in relation to advice and redaction but their resources are also limited. The current service levels have been maintained through the hard work, commitment and extra hours from the team.
20. The responses to statutory requests for information continue to utilise significant resource for the council both corporately and within service directorates.

Forthcoming Developments

21. The General Counsel and the Team Leader of the Information Resilience and Transparency Team will be reviewing the council’s processes and procedures

in relation to both Freedom of Information and Data Protection requests later in the year to establish whether any changes can or should be made. With the imminent implementation of GDPR, resources and expertise are currently being applied to that. The General Counsel will provide findings to Corporate Management Team in May 2018 and these will subsequently be discussed and recommendations reported to this Cabinet Committee before the summer recess.

22. Additional reporting has been provided over the course of the last year in relation to Freedom of Information. Additional data will be provided to members of the Corporate Management Team to help them understand those cases where the statutory deadline has not been met. A quarterly report will be taken by the General Counsel to Corporate Management Team to ensure that we remain aware of the reasons for any delay and look at the cases further to explore learning and improvement opportunities.
23. The council continues to work hard with limited resources to provide information to residents and requestors in accordance with our statutory duties at the earliest opportunity.

Recommendations

24. It is recommended that Members note the report.